

Senate File 2210 - Introduced

SENATE FILE 2210

BY DIX

A BILL FOR

1 An Act relating to a right of first refusal for cotenants of
2 family farms and defendants in certain partition actions,
3 and including applicability provisions.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. 557D.1 Definitions.

2 For purposes of this chapter, unless the context otherwise
3 requires:

4 1. "*Agricultural land*" means land suitable for use in
5 farming.

6 2. "*Cotenant*" means a person who possesses an interest of
7 record in a family farm.

8 3. "*Family farm*" means real property owned by more than one
9 cotenant that satisfies all of the following requirements:

10 a. The real property is agricultural land.

11 b. All of the cotenants acquired title to the real estate
12 from a relative, whether living or deceased.

13 c. There is no written agreement binding all of the
14 cotenants that governs the partition of the real property or
15 the rights in the real property of all of the cotenants in
16 relation to each other.

17 4. "*Nonselling cotenant*" means a cotenant of a family farm
18 where another cotenant is a selling cotenant.

19 5. "*Relative*" means a person who is related to another
20 person as a spouse, parent, grandparent, lineal ascendants of
21 grandparents or their spouses and lineal descendants of the
22 grandparents or their spouses, or persons acting in a fiduciary
23 capacity for persons so related.

24 6. "*Selling cotenant*" means a cotenant who proposes to sell
25 such cotenant's interest in a family farm.

26 Sec. 2. NEW SECTION. 557D.2 Right of first refusal.

27 1. A selling cotenant shall not sell the selling cotenant's
28 interest in a family farm before offering each nonselling
29 cotenant the right to purchase the selling cotenant's interest
30 for fair market value, as determined under section 557D.3.

31 2. After the fair market value of the selling cotenant's
32 interest in the family farm has been determined under section
33 557D.3, the nonselling cotenants shall have ten business
34 days after receiving notice of the price to submit a binding
35 offer to the selling cotenant for the purchase of the selling

1 cotenant's interest, with closing to occur within thirty days
2 after the offer unless otherwise agreed to by the selling
3 cotenant.

4 3. If more than one nonselling cotenant submits a binding
5 offer to purchase the selling cotenant's interest in the family
6 farm, a nonselling cotenant who submits a binding offer shall
7 be entitled to purchase a portion of the selling cotenant's
8 interest that is in proportion to each nonselling cotenant's
9 existing interest in the family farm.

10 4. After the expiration of either the period for offer or
11 the period for closing, without submission of an offer or a
12 closing occurring, the selling cotenant may sell the interest
13 to any other person.

14 5. a. Notwithstanding subsection 4, if more than one
15 nonselling cotenant submitted a binding offer to the selling
16 cotenant and one or more nonselling cotenants failed to close
17 within the time period specified in this section, a nonselling
18 cotenant who complied with this section and purchased a portion
19 of the selling cotenant's interest in the family farm may
20 submit a binding offer to the selling cotenant to purchase the
21 selling cotenant's remaining interest.

22 b. The selling cotenant shall notify each nonselling
23 cotenant who complied with this section and purchased a portion
24 of the selling cotenant's interest in the family farm that
25 a nonselling cotenant failed to close within the specified
26 time period and that the compliant nonselling cotenant has the
27 right to purchase the selling cotenant's remaining interest
28 by submitting a binding offer to the selling cotenant for the
29 fair market value of the interest. The fair market value shall
30 be the price determined under section 557D.3, multiplied by
31 the fraction that is the selling cotenant's remaining interest
32 divided by the selling cotenant's original interest.

33 c. Such binding offer must be submitted within ten business
34 days after the receipt of notice under paragraph "b", and
35 closing must occur within thirty days after the offer unless

1 otherwise agreed to by the selling cotenant. If more than one
2 nonselling cotenant wishes to purchase an additional amount of
3 the selling cotenant's interest and is eligible to do so under
4 this subsection, a nonselling cotenant may purchase a portion
5 of the selling cotenant's unsold interest in the family farm
6 that is in proportion to each nonselling cotenant's existing
7 interest in the family farm.

8 6. If, more than one year after the selling cotenant
9 offered the nonselling cotenant the right to purchase the
10 selling cotenant's interest for fair market value the selling
11 cotenant has not sold the selling cotenant's interest, the
12 selling cotenant shall not sell the interest without again
13 offering each nonselling cotenant the right to purchase the
14 selling cotenant's interest for the fair market value price as
15 determined at such time in accordance with the procedure under
16 section 557D.3.

17 7. The right of first refusal provided in this section
18 is not assignable, but may be exercised by the nonselling
19 cotenant's personal representative, executor, or heir in case
20 of the death of the nonselling cotenant.

21 Sec. 3. NEW SECTION. 557D.3 **Determination of fair market**
22 **value.**

23 The fair market value of the selling cotenant's interest in
24 the family farm shall be determined as follows:

25 1. The selling cotenant and nonselling cotenant may agree to
26 the fair market value of the selling cotenant's interest in the
27 family farm at any time during the process described in this
28 section. If there is more than one nonselling cotenant, such
29 an agreement must be unanimous.

30 2. If the selling cotenant and nonselling cotenant cannot
31 agree on the fair market value of the selling cotenant's
32 interest in the family farm, the selling cotenant shall select
33 an independent, certified appraiser who shall appraise the
34 value of the selling cotenant's interest. The cost of the
35 appraisal shall be paid by the selling cotenant.

1 3. The nonselling cotenant may accept the appraised value of
2 the appraiser selected by the selling cotenant or may select a
3 second independent, certified appraiser to appraise the value
4 of the selling cotenant's interest. If there is more than
5 one nonselling cotenant, an agreement to accept the appraised
6 value of the appraiser selected by the selling cotenant must
7 be unanimous. If the nonselling cotenant obtains a second
8 appraisal, such cost shall be paid by the nonselling cotenant.

9 4. If the two appraisals are of the same value, such value
10 shall be the fair market value of the selling cotenant's
11 interest in the family farm.

12 5. If the two appraisals are of different values, the
13 two appraisers shall select a third independent, certified
14 appraiser to appraise the value of the selling cotenant's
15 interest. The fair market value of the selling cotenant's
16 interest shall be the average of the three appraisals. The
17 cost of the third appraisal shall be divided equally between
18 the cotenants.

19 Sec. 4. NEW SECTION. 557D.4 Waiver of rights.

20 A cotenant, in a signed writing, may waive the cotenant's
21 rights under this chapter.

22 Sec. 5. NEW SECTION. 651.7 Partition of family farm.

23 1. If real property to be partitioned is a family farm and
24 the court has ordered a partition by sale, the court shall
25 provide the defendant the right to purchase the plaintiff's
26 interest for fair market value, as determined by the court.

27 2. The defendant shall have thirty days to exercise the
28 right to purchase the plaintiff's interest.

29 3. If more than one defendant desires to exercise the right
30 to purchase the plaintiff's interest, the court shall allow
31 a defendant electing to purchase the plaintiff's interest to
32 purchase a portion of the plaintiff's interest that is in
33 proportion to each defendant's existing interest in the family
34 farm.

35 4. If a defendant who indicated a desire to purchase the

1 plaintiff's interest does not exercise the right to purchase
 2 a portion of the plaintiff's interest within thirty days, and
 3 another defendant did exercise the right to purchase a portion
 4 of the plaintiff's interest within thirty days, the court shall
 5 provide a defendant who purchased such a portion an opportunity
 6 to purchase the remaining portion of the plaintiff's interest
 7 for fair market value. If more than one defendant wishes to
 8 purchase an additional amount of the plaintiff's interest and
 9 is eligible to do so under this subsection, a defendant may
 10 purchase a portion of the plaintiff's unsold interest that is
 11 in proportion to each defendant's existing interest in the
 12 family farm.

13 5. For purposes of this section, "*family farm*" means the
 14 same as defined in section 557D.1.

15 Sec. 6. APPLICABILITY.

16 1. The sections of this Act enacting sections 557D.1,
 17 557D.2, 557D.3, and 557D.4 apply to transfers of real estate
 18 occurring on or after the effective date of this Act.

19 2. The section of this Act enacting section 651.7 applies to
 20 partition actions filed on or after the effective date of this
 21 Act.

22 EXPLANATION

23 The inclusion of this explanation does not constitute agreement with
 24 the explanation's substance by the members of the general assembly.

25 This bill enacts new Code chapter 557D, which creates a right
 26 of first refusal for cotenants of family farms who acquired
 27 an interest in the family farm from a relative and enacts new
 28 Code section 651.7, which creates a right of first refusal in
 29 partition actions involving a family farm.

30 DEFINITIONS. The bill defines "family farm" as real
 31 property that is agricultural land that is owned by more than
 32 one cotenant all of whom acquired title to the real estate
 33 from a relative, whether living or deceased, and for which
 34 there is no written agreement binding all of the cotenants
 35 which governs the partition of the real property or the rights

1 in the real property of all of the cotenants in relation to
2 each other. The bill defines "relative" as a person who is
3 related to another person as a spouse, parent, grandparent,
4 lineal ascendants of grandparents or their spouses and lineal
5 descendants of the grandparents or their spouses, or persons
6 acting in a fiduciary capacity for persons so related.

7 RIGHT OF FIRST REFUSAL. The bill provides that a selling
8 cotenant shall not sell the selling cotenant's interest in
9 a family farm before offering each nonselling cotenant the
10 right to purchase the selling cotenant's interest for fair
11 market value. After the determination of fair market value, a
12 nonselling cotenant has 10 business days to submit a binding
13 offer to the selling cotenant for the purchase of the selling
14 cotenant's interest. The closing must occur within 30 days
15 after the offer is submitted to the selling cotenant.

16 If more than one nonselling cotenant submits an offer, the
17 bill provides that each may purchase a portion of the selling
18 cotenant's interest in the family farm that is in proportion
19 to each nonselling cotenant's existing interest in the family
20 farm. The bill provides that if multiple nonselling cotenants
21 submit a binding offer to a selling cotenant, but one of the
22 nonselling cotenants fails to close within 30 days after the
23 offer is submitted, a nonselling cotenant who purchased part
24 of the selling cotenant's interest is eligible to purchase an
25 amount of the unsold interest.

26 The bill provides that if more than one year after the
27 selling cotenant offered the nonselling cotenant the right to
28 purchase the selling cotenant's interest the selling cotenant
29 has not sold the selling cotenant's interest, the selling
30 cotenant shall not sell the interest without again offering
31 each nonselling cotenant the right to purchase the interest for
32 fair market value.

33 The bill provides that the right of first refusal under new
34 Code chapter 557D is not assignable but may be exercised by the
35 nonselling cotenant's personal representative, executor, or

1 heir in case of the death of the nonselling cotenant.

2 DETERMINATION OF FAIR MARKET VALUE. The bill provides
3 that the cotenants may agree on the fair market value for
4 the selling cotenant's interest in the family farm. If the
5 cotenants are unable to agree, the bill directs the selling
6 cotenant to obtain and pay for an independent appraisal of
7 the value of the selling cotenant's interest. The nonselling
8 cotenant may agree with the value of the appraisal or may
9 obtain and pay for a second independent appraisal of the value
10 of the selling cotenant's interest. If the value of each
11 appraisal is the same, that is the fair market value of the
12 selling cotenant's interest in the family farm. If the two
13 appraisals are of different values, the two appraisers shall
14 select a third independent appraiser to appraise the value of
15 the selling cotenant's interest. The fair market value of the
16 selling cotenant's interest shall be the average of the three
17 appraisals. The cost of the third appraisal shall be divided
18 equally between the cotenants.

19 WAIVER. A cotenant, in a signed writing, may waive the
20 cotenant's rights under new Code chapter 557D.

21 PARTITION ACTIONS. Under current Code chapter 651, a
22 cotenant may file a partition action to divide the property
23 among the cotenants. The bill enacts new Code section 651.7,
24 which provides that if real property to be partitioned is a
25 family farm and the court has ordered a partition by sale,
26 the court shall provide a defendant the right to purchase the
27 plaintiff's interest for fair market value, as determined
28 by the court. In such a case, the defendant has 30 days to
29 exercise the right to purchase the plaintiff's interest.

30 If more than one defendant submits an offer, the bill
31 provides that each may purchase a portion of the plaintiff's
32 interest in the family farm that is in proportion to each
33 defendant's existing interest in the family farm. The bill
34 provides that if multiple nonselling cotenants express a desire
35 to purchase a portion of the plaintiff's interest, but one

1 of the defendants fails to close within 30 days, a defendant
2 who purchased part of the plaintiff's interest is eligible to
3 purchase an additional amount of the interest.

4 APPLICABILITY. The bill provides that new Code chapter 557D
5 applies to transfers of real estate occurring on or after the
6 effective date of the bill, and that new Code section 651.7
7 applies to partition actions filed on or after the effective
8 date of the bill.